[Cite as *State ex rel. Brannon v. Lakeview School Bd. of Edn.*, 2016-Ohio-1367.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel. TERRY BRANNON,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2015-T-0034**
- vs -	:	
LAKEVIEW LOCAL SCHOOL DISTRICT BOARD OF EDUCATION,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2014 CV 2005.

Judgment: Reversed and remanded.

Ira J. Mirkin, and *Charles W. Oldfield,* Green, Haines & Sgambati Co., L.P.A., 100 Federal Plaza East, Suite 800, Youngstown, OH 44503 (For Plaintiff-Appellant).

Curtis J. Ambrosy, Manchester Newman & Bennett, LPA, The Commerce Building, Atrium Level Two, 201 East Commerce Street, Youngstown, OH 44503 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant, Terry Brannon, appeals from the denial and dismissal of his petition for writ of mandamus by the Trumbull County Court of Common Pleas. The issues before this court are whether a school board, pursuant to R.C. 3319.081, may decline to renew a non-teaching employee's contract after three years of continuous employment; whether a non-teaching school employee is entitled to a continuing

contract under R.C. 3319.081 after being "re-employed" by the district as part of a grievance settlement agreement; and whether the grievance and arbitration provisions of a collective bargaining agreement constitute a plain and adequate remedy at law to vindicate statutory rights incorporated into the agreement. For the reasons that follow, we reverse the trial court's judgment and remand the matter for further proceedings.

{¶2} On November 3, 2014, Brannon filed a petition for writ of mandamus in the Trumbull County Court of Common Pleas against Lakeview Local School District Board of Education ("the Board"). Brannon alleged that, under R.C. 3319.081, he was "entitled to the issuance of a continuing contract as a bus driver by Defendant-Respondent, retroactive to the 2012-13 school year," and that "Defendant-Respondent has refused, and continues to refuse, to issue * * * a continuing contract of employment despite its clear legal duty to do so." Brannon, in relevant part, sought a writ of mandamus ordering "Defendant-Respondent to immediately reinstate Plaintiff-Relator to his employment and to issue to Plaintiff-Relator a continuing contract of employment as a bus driver retroactive to the 2012-13 school year."

{¶3} On December 10, 2014, the trial court issued a judgment entry and alternative writ, directing the Board "to file a written response * * * stating whether or not Plaintiff-Relator is entitled to the relief sought in its original writ."

{¶4} On January 5, 2015, the Board filed its Answer to Petition for Writ of Mandamus. It subsequently filed a Brief in Response to the Petition for Writ of Mandamus. Brannon later filed his Brief in Support of his petition, to which the Board duly replied. On March 18, 2015, the trial court entered judgment denying the petition and dismissing the same.

{¶5} Brannon now appeals and assigns the following error:

{¶6} "The trial court erred when it denied and dismissed appellant's petition for writ of mandamus."

{¶7} "Generally, to be entitled to a writ of mandamus, the relator must establish a clear right to the requested relief, a clear legal duty on the part of the respondents to provide it, and the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Clough v. Franklin Cty. Children Servs.*, 144 Ohio St.3d 83, 2015-Ohio-3425, ¶10; R.C. 2732.01 ("[m]andamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station."); R.C. 2731.05 ("[t]he writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law").

{¶8} Here, the trial court dismissed the petition based on "the petition, reply, memoranda, pleadings, exhibits and the relevant applicable law." Because this procedure most nearly approximates the procedure for granting summary judgment, we shall apply a "de novo" standard of review. *State ex rel. Manley v. Walsh*, 142 Ohio St.3d 384, 2014-Ohio-4563, ¶17 ("[b]ecause the appellate court granted summary judgment, this court reviews the decision de novo, notwithstanding the general rule that the standard of review in a mandamus case is abuse of discretion"). Any dispute regarding the material facts of the case will, accordingly, be construed in Brannon's favor.

{¶9} Brannon's Petition for Writ of Mandamus is premised on the following statute:

> **{¶10}** [I]in all school districts wherein the provisions of Chapter 124. of the Revised Code do not apply, the following employment contract system shall control for employees whose contracts of employment are not otherwise provided by law:
>
> **{¶11}** (A) Newly hired regular nonteaching school employees, including regular hourly rate and per diem employees, shall enter into written contracts for their employment which shall be for a period of not more than one year. If such employees are rehired, their subsequent contract shall be for a period of two years.
>
> **{¶12}** (B) After the termination of the two-year contract provided in division (A) of this section, if the contract of a nonteaching employee is renewed, the employee shall be continued in employment * * *.

{¶13} The time line for Brannon's employment is as follows: He was hired in 2007-2008 as a full-time bus driver under a one-year contract, pursuant to R.C. 3319.081. He was subsequently renewed and accepted a two-year contract through the 2009-2010 school year, also pursuant to R.C. 3319.081. In 2011, the Board determined it would not renew Brannon's employment. Brannon subsequently filed a grievance and the parties entered into a settlement agreement that purported to limit Brannon's employment to a one-year term of employment, subject to renewal. The agreement provided that Brannon "retains all rights under the law and under the present collective bargaining agreement." Brannon subsequently accepted a one-year limited contract for the 2012-2013 school year; he then was offered and accepted an additional one-year limited contract for the 2013-2014 school year.

{¶14} The first issue for review is whether Brannon was entitled to "be continued in employment," i.e., a continuing employment contract, following three years of continuous employment with the school district, pursuant to R.C. 3319.081(B). Brannon

relies on the Ohio Supreme Court's decision in *State ex rel. Boggs v. Springfield Local School Dist.Bd. of Edn.*, 82 Ohio St.3d 222 (1998). In *Boggs*, the Court observed:

> **{¶15}** Pursuant to R.C. 3319.081, local district school boards are required to enter into written employment contracts for a period of not more than one year with newly hired, regular nonteaching school employees. If those employees are then reemployed, the school board is required to enter into a written two-year contract with the employee. After three years of full-time employment, a nonteaching school employee is deemed to be employed pursuant to a continuing contract.

Boggs, *supra*, at 226. *See also State ex rel. Couch v. Trimble Local School Dist. Bd of Edn*., 120 Ohio St.3d 75, 2008-Ohio-4910 (reaffirming, with emphasis added, "*[a]fter three years of full-time employment, a nonteaching school employee is deemed to be employed pursuant to a continuing contract.*")

{¶16} Interpreting R.C. 3319.081 in light of *Boggs* and *Couch*, Brannon maintains that he was automatically entitled to a continuing contract upon completion of three years of continuous employment.

{¶17} The Board interprets R.C. 3319.081 to mean that *if* the two year contract of the non-teaching employee is renewed, then he or she shall be given a continuous contract. Put differently, the Board's position is that a local district school board has discretion, after the expiration of the one-year and two-year limited contracts, to continue a non-teaching school employee's employment. If the school board does so, the employee is entitled to a two-year or continuing employment contract respectively. We agree with the Board's interpretation.

{¶18} Under a plain reading of the statute, a newly hired non-teaching school employee is entitled to a one-year contract. "*If* such employees are rehired," they are entitled to a two-year contract. (Emphasis added.) R.C. 3319.081(A). *If* the two-year

contract is renewed, "the employee shall be continued in employment." R.C. 3319.081(B). Reading these provisions together, continued employment, after the expiration of the one-year and two-year contracts, is conditional, not automatic. Accordingly, a school board may terminate a non-teaching school employee's employment after the completion of the one-year and two-year contract periods; if, however, employment is continued, the employee must be employed under a two-year or continuing contract respectively.

{¶19} Viewing the facts in a light most favorable to Brannon, we conclude Brannon was indeed retained for the 2011-2012 school year and thus was entitled to continuous employment.

{¶20} The Board disputes this construction, contending that once Brannon accepted the one-year limited contract for the 2011-2012 school year, in settlement of the grievance he filed, he was newly hired for purposes of R.C. 3319.081. According to the Board, his status as a newly-hired employee rendered his previous three years of employment inconsequential for purposes of the statute. The Board concedes that the two separate, one-year limited contracts for employment for the 2012-2013 as well as the 2013-2014 school years should be viewed as a single, two-year contract. This construction is not what factually occurred, but would be consistent with R.C. 3319.081. Construing the facts as such, the Board asserts Brannon was employed only for the three-year period, provided for under R.C. 3319.081(A), and the Board was under no obligation to renew his employment contract. This position, however, is problematic for several reasons and would defeat the purpose of R.C. 3319.081.

{¶21} First, the settlement agreement did not expressly state Brannon, upon entering the settlement, would have the status of a newly-hired employee. Brannon had been employed by the school district for the statutorily-prescribed three years. The mere fact that the Board decided not to renew Brannon's employment cannot, unto itself, reset the clock for purposes of R.C. 3319.081.

{¶22} R.C. 3319.081 is a prophylactic statute enacted to provide job security to non-teacher employees within a school district. *See Boggs*, *supra*, at 226. At oral argument, however, counsel for the Board admitted the Board had a policy of "automatic non-renewal" of any employee after the initial three-year period. And, according to counsel, in Brannon's case, the Board, pursuant to the "automatic non-renewal" policy, decided, contrary to statute, not to offer Brannon a continuous contract in 2011. The Board's action prompted Brannon to file a grievance. The grievance was ultimately settled when the Board offered Brannon a one-year limited employment contract. To the extent Brannon was not actually terminated, however, Brannon, should have been given continuing employment status, pursuant to R.C. 3319.081.

{¶23} The "automatic non-renewal" policy has the effect of compelling an employee, like Brannon, to file a grievance which, to the extent the decision not to renew was not a result of the employee's misconduct, more likely than not, will result in a settlement. And, from the Board's perspective, such an employee will always be a new hire and, as a result, nonteaching school district employees will never reach continuing employment status.

{¶24} Because the foregoing policy creates job instability for nonteaching school district employees, it fundamentally subverts the inherent purpose of R.C. 3319.081.

Accepting the Board's argument would be tantamount to endorsing a practice inconsistent with the statute and would render R.C. 3319.081 a nullity. We decline to do so. We consequently hold the Board's non-renewal in 2011 did not interrupt Brannon's continuous employment because he was subsequently retained by operation of the settlement.

{¶25} Moreover, the Board's argument that the 2011 settlement rendered appellant a "new employee" hinges upon a shifting and dubious meaning of the term "limited" not contemplated in the statute.

{¶26} The Board notes that Brannon voluntarily entered the "limited" one-year agreement. The Board proceeded to enter into two additional one-year, "limited" employment contracts. In these cases, however, the Board argued the contracts were not actually "limited" in nature, or at least should not be treated as such; instead, the Board maintained, they should be treated as the functional equivalent of a singular, two-year contract so as to comply with R.C. 3319.081(A). Construing the facts as such, the Board was under no obligation to renew Brannon's contract after the statutory three-year period; and, significantly, Brannon's failure to pursue a grievance under the CBA for the Board's decision would preclude the underlying mandamus action because Brannon had, but did not pursue, an adequate remedy at law.

{¶27} The Board, in its brief, concedes the 2012 and 2013 one-year "limited" contracts were not "limited" for purposes of R.C. 3319.081. The Board specifically states that it "should have" structured the two, one-year limited contracts "as a single, two year agreement." In the Board's view, this distinction is "meaningless," however, "[b]ecause Brannon did work for a full two year term[.]"

{¶28} It is unclear, given the circumstances, how the Board can insist that the term "limited" should be strictly construed against Brannon as it relates to the 2011 settlement, but ignored for purposes of the later contracts. If the term "limited" does not have the same meaning in the context of all Brannon's employment contracts, it, in effect, has no meaning at all. The Board cannot have the benefit of eliminating the term in the later contracts, in order to give the appearance of comporting with the statute, but have the term construed strictly for purposes of the 2011 settlement, in order to avoid the effects of the "continuous employment" aspect of the statute. The Board's selective use and/or interpretation of the term "limited," in light of its policy of not renewing non-teaching employees, provides further evidence that it has actively attempted to skirt the purposes of R.C. 3319.081, while giving the appearance of comporting with the statute's legal mandates.

{¶29} Viewed in the context of the Board's admissions and actions, we hold the 2011 settlement cannot be construed as resetting him as a newly hired employee. The 2011 agreement, settling Brannon's grievance, expressly afforded Brannon "all rights under the law," not the least of which are the protections of R.C. 3319.081. Accordingly, that agreement represents the beginning of Brannon's continuous employment. Brannon had a clear legal right to continued employment and the Board had a clear legal duty to provide Brannon the relief. Brannon originally followed the grievance procedures, but was not afforded the continuous employment to which he was entitled. He therefore has no adequate remedy at law and is entitled to mandamus in this case.

{¶30} One additional point requires treatment. The Board argues Brannon was obligated to follow the grievance procedures following its most recent decision not to

renew his employment. And, as a result, he had, but did not utilize an adequate remedy at law. The Board therefore concludes, Brannon is not entitled to relief in mandamus. We do not agree with this conclusion.

{¶31} First of all, the Collective Bargaining Agreement expressly incorporates R.C. 3319.081. *See* Article 5.01. Moreover, the grievance procedure is applicable when "there has been a violation, misinterpretation, or misapplication of the language in this Master Contract." Article 4.01. It nevertheless concludes "Brannon's right to continuing employment * * * is subject to vindication by way of the agreement's grievance and arbitration provisions."

{¶32} In *State ex rel. Ohio Association of Public School Employees/AFSCME, Local 4, AFL-CIO v. Batavia Local School Dist. Bd. Of Edn.*, 89 Ohio St.3d 191 (2000), the Ohio Supreme Court held, "[i]n order to negate statutory rights of public employees, a collective bargaining agreement must use language with such specificity as to explicitly demonstrate that the intent of the parties was to preempt statutory rights." *Id.* at syllabus.

{¶33} The Collective Bargaining Agreement in this case does not expressly preempt Brannon's statutory rights; to the contrary, it incorporated those rights. Accordingly, after the expiration of the three-year statutory term, Brannon had a clear legal right, pursuant to R.C. 3319.081, to retain his position. The CBA explicitly incorporated this individual statutory right and, as a result, the Board had a clear legal duty to recognize that right. Under such circumstances, the Court in *Batavia*, *supra*, noted that an individual in Brannon's position has:

> **{¶34}** "* * * no adequate remedy at law. While the parties' collective bargaining agreement did contain a grievance and arbitration

> procedure, appellants are seeking the enforcement of their statutory employment rights pursuant to R.C. 3319.081 and are not seeking the enforcement of any specific provision of the collective bargaining agreement. Therefore, we conclude that the grievance and arbitration procedure would not provide an adequate remedy, since the individual appellants' rights to continued employment with the Board arise from statutory authority rather than the collective bargaining agreement." *Batavia*, *supra*, at 198.

{¶35} Here, Brannon sought vindication of his statutory right to continuing employment when he filed his original grievance. The Board did not honor his right under the statute; instead, it purported to settle the grievance by entering into several one-year limited employment contracts. This is not the relief the statute or legislature mandates. Brannon explored the remedy of filing a grievance, but was not afforded the relief to which he was statutorily entitled; namely, continuous employment as an employee who was retained after the initial three-year period.

{¶36} In light of these points, it is worth pointing out that the Board failed to follow procedures set forth under the CBA when it decided not to renew Brannon in 2014. Section 15.047 of the CBA provides:

> **{¶37}** Prior to the suspension or discharge of a bargaining unit member, the bargaining unit member shall receive prior notice of the possible action, with such notice containing reason or reasons for the action. Prior to the suspension or discharge, said bargaining unit member shall be entitled to a hearing before the Superintendent, with union representation, for the purpose of discussing the reasons and permitting the bargaining unit member to offer defense in his/her behalf.

{¶38} The Board did not provide Brannon with prior notice or a hearing, as required by the CBA. Instead, it elected to proceed pursuant to R.C. 3319.081 and, in its discretion, not renew Brannon. Because the Board did not follow the prescribed

procedures under the CBA prior to acting, its "non-renewal" was essentially a discharge without cause in violation of Brannon's continuous employment status.

{¶39} It is inequitable and unjust for the Board to insist that Brannon follow procedures set forth in the CBA that it unilaterally ignored, especially where, as here, Brannon had previously done so, and been denied appropriate relief. We consequently hold Brannon was not required to pursue the grievance and arbitration process anew after the Board decided not to renew his contract in 2014. We therefore conclude Brannon is entitled to continuing-employment status as of 2011 and mandamus is the proper action and remedy in this case.

{¶40} Brannon's assignment of error has merit.

{¶41} For the foregoing reasons, the judgment of the Trumbull County Court of Common Pleas is reversed and the matter is remanded for further proceedings.

COLLEEN MARY O'TOOLE, J., concurs,

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

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{¶42} I respectfully dissent from the majority's decision to reverse the trial court. In the first instance, the majority misconstrues the import of the 2011 Settlement Agreement which manifestly contemplates Brannon's return to employment as a "new hire" for the purpose of determining his "rights under the law and under the present collective bargaining agreement." Just as significant, the majority fails to recognize the

grievance procedure as an adequate remedy at law, thereby precluding the specific remedy of mandamus. Assuming, arguendo, that Brannon was entitled to a continuing contract, his claim should properly be vindicated through the procedures mandated by the collective bargaining agreement.

{¶43} The majority correctly recognizes that a newly hired nonteaching school employee is entitled to a one-year contract pursuant to R.C. 3319.081(A). The employee's continued employment after the expiration of the one-year contract is discretionary with the school board. If the board continues his or her employment, the employee is, by law, entitled to a two-year contract. At the expiration of the two-year contract, the school board again has the option to not renew the employee's contract. If the board chooses to continue the employment, the employee is, by law, entitled to a continuing employment contract pursuant to R.C. 3319.081(B).

{¶44} There is no dispute that Brannon was employed by the Lakeview school board under the one-year contract provided for by R.C. 3319.081(A) from 2007 to 2008, and under the two-year contract from 2008 to 2011.

{¶45} There is also no dispute that Brannon's contract was ***not renewed*** after the expiration of the two-year contract in 2011. According to the affidavit of school superintendant, Robert Wilson:

> Brannon had a history of discipline. He was disciplined for direct in-your-face insubordination. He refused a direct order of his immediate supervisor which caused him to be written up. Also, as a bus driver, he dropped off students when they were unsupervised in violation of clear Board policy. * * * As a result of his disciplinary

> history, his contract was non-renewed after the 2010-11 school year.

{¶46} Accordingly, Brannon was not entitled to a continuing employment contract. The condition of R.C. 3319.081(B) ("if the contract of a nonteaching employee is renewed") was not fulfilled. The board, in the exercise of its discretion, did not renew the contract.

{¶47} The only reason to call this conclusion into question is the fact that Brannon grieved the non-renewal of his contract and, ultimately, was able to retain his employment with the school board. The fact that Brannon was able to retain his employment, however, does not mean that he was entitled to the continuing contract, as the majority asserts. On the contrary, the resolution of the grievance precludes such a conclusion.

{¶48} Pursuant to a "non-precedent setting" agreement, Brannon dismissed the grievance with prejudice. According to its terms:

> Terry Brannon, on whose behalf the LSSA [union] filed the instant grievance, has been offered and accepted a one-year limited contract. The one-year limited contract was offered and voluntarily accepted in full settlement of the grievance. The one-year limited contract is subject to being renewed or non-renewed by April 30, 2012. Mr. Brannon retains all rights under the law and under the present collective bargaining agreement.

{¶49} These terms place Brannon in precisely the position he would occupy as a new hire. It cannot be reasonably doubted that this was the intention of the parties. As

noted above, the school board was within its rights under the statute not to renew Brannon's contract after the expiration of the two-year contract in 2011. The record indicates that Brannon had disciplinary issues. Given these circumstances, the agreement to conditionally renew Brannon's employment was a reasonable accommodation to avoid the outright termination of Brannon's employment.

{¶50} Under the majority's interpretation, the parties did not have the freedom to negotiate the resolution of the grievance that they did. The majority fixes the date of the settlement agreement as the point at which "Brannon had a clear legal right to continued employment" and "the beginning of Brannon's continuous employment." *Supra* at ¶ 29. In other words, the only options available to the parties were termination or continuous employment. The majority's reasoning precludes the possibility of negotiated settlement.

{¶51} The majority bases its holding on the school board's "policy of 'automatic non-renewal' of any employee after the initial three-year period." *Supra* at ¶ 22. The majority misunderstands the non-renewal policy as a practice which "fundamentally subverts the inherent purpose of R.C. 3319.081." *Supra* at ¶ 24, 28 (the school board "has actively attempted to skirt the purposes of R.C. 3319.081, while giving the appearance of comporting with the statute's legal mandates"). According to the majority:

> The "automatic non-renewal" policy has the effect of compelling an employee, like Brannon, to file a grievance which, to the extent the decision not to renew was not a result of the employee's misconduct, more likely than not, will result in a settlement. And,

> from the Board's perspective, such an employee will always be a new hire and, as a result, nonteaching school district employees will never reach continuing employment status.

Supra at ¶ 23.

{¶52} This detrimental interpretation of the school board's motivation is not supported by the record before this court. There is no evidence that the school board has ever non-renewed an employee's contract for the purpose of forcing them to file a grievance and accept a settlement in which they are put in the position of a new hire, all for the purpose of avoiding the statutory requirement of offering them a continuous contract. Such a practice, if it existed, would certainly be more onerous for the school board than having to employ bus drivers under continuous contracts.[1]

{¶53} Counsel for the school board explained at oral argument that "we can always choose to non-renew after a two-year contract, * * * we can always choose not to offer them a continuous contract after that and at that point they are free to go work for somebody else." Counsel further advised this court that "Lakeview has well over a hundred people who have continuous contracts," and "to the extent that this is a nefarious conspiracy to keep people [in] limited contracts, this flies in the face of past history and current practice."

{¶54} Counsel's statement is supported by the evidentiary record. Following the non-renewal of Brannon's contract in 2014 he filed a discrimination claim with the Ohio Civil Rights Commission. In a notarized statement, Brannon stated that "[a]ll bus drivers are given a continuous contract after three years." Brannon ascribes his failure to

1. Ironically for the school board, it decided to rehire Brannon in 2012, despite not having an obligation to do so, in an "attempt to settle that grievance and avoid mounting legal costs." Affidavit of Robert Wilson.

receive such a contract to retaliation against him for filing a sex discrimination charge in 2008.[2]

{¶55} Accordingly, there is no reason to disregard the terms of the settlement agreement or the circumstances in which it was negotiated. According to those terms, Brannon was in the position of a newly-hired employee in 2011 and his rights under the law should be determined accordingly.

{¶56} The majority also errs in its conclusion that the grievance procedure under the collective bargaining agreement did not constitute an adequate remedy in the ordinary course of law.

{¶57} "A grievance and arbitration procedure in a collective bargaining agreement generally provides an adequate legal remedy, which precludes extraordinary relief in mandamus, when violations of the agreement are alleged by a person who is a member of the bargaining unit covered by the agreement." *State ex rel. Walker v. Lancaster City School Dist. Bd. of Edn.*, 79 Ohio St.3d 216, 218, 680 N.E.2d 993 (1997).

{¶58} Here, the majority takes the remarkable position that, by grieving his termination in 2011, Brannon was under no obligation to do so again following his termination in 2014. The majority's reasoning is that, since the school board failed to recognize Brannon's statutory entitlement to a continuous contract in 2011, the grievance procedure is de facto an inadequate remedy at law. *Supra* at ¶ 35 ("Brannon explored the remedy of filing a grievance, but was not afforded the relief to which he

2. Brannon's notarized statement is also noteworthy for the admission that the union advised him that the reason for the non-renewal of his contract was that he had given flowers to a student. An affidavit submitted by the parents of this ten-year-old student attested further inappropriate and unwelcome attention paid to their daughter by Brannon.

was statutorily entitled; namely, continuous employment as an employee who was retained after the initial three-year period").

{¶59} The majority fails to grasp the essential underlying fact that Brannon was terminated, not retained, after his initial three-year period. Following the expiration of the two-year contract, the school board both had and exercised the right not to retain him as an employee. The board chose not to retain him on account of disciplinary issues, not because of some unscrupulous scheme to force him into accepting a limited contract. If Brannon had not filed the grievance, the matter would have been at an end. The majority assumes that because the school board settled the grievance and agreed to rehire Brannon, it was under a legal obligation to do so. But there is absolutely nothing in law or fact to support such an assumption. The details of the negotiated settlement are not in the record before us.

{¶60} Assuming, arguendo, that the school board's failure to rehire Brannon in 2011 under a continuous contract violated R.C. 3319.081, it does not follow that Brannon was absolved from using the grievance procedure to obtain relief in 2014. The adequate remedy in the ordinary course of law rule applicable to mandamus actions is not to be confused with the exhaustion of administrative remedies doctrine applicable in other contexts. If the grievance procedure was an adequate remedy at law in 2011, it remained so in 2014. The rule is not nullified merely because Brannon did not obtain the relief to which he or the majority believes he was entitled.

{¶61} The majority cites *State ex rel. Ohio Assoc. of Pub. School Emps./AFSCME v. Batavia Local School Dist. Bd. of Edn.*, 89 Ohio St.3d 191, 198, 729 N.E.2d 743 (2000), for the proposition that an employee in Brannon's position has "no

adequate remedy at law" where the employee's "rights to continued employment with the Board arise from statutory authority rather than the collective bargaining agreement." *Supra* at ¶ 34.

{¶62} *Batavia* is wholly inapposite to the present case. In *Batavia*, the issue was whether the terms of a collective bargaining agreement ***preempted*** an employee's statutory rights under R.C. 3319.081 in the absence of language expressly stating the intent to preempt those rights. In the present case, the collective bargaining agreement expressly ***incorporates*** the statutory rights under R.C. 3319.081. Consistent with the *Batavia* case, it is precisely because Brannon's statutory rights are incorporated into the collective bargaining agreement that the grievance procedure constitutes an adequate remedy in the ordinary course of law. As such, Brannon was obligated to avail himself of the grievance procedure and is precluded from obtaining relief in mandamus.

{¶63} For the foregoing reasons, I respectfully dissent and would affirm the decision of the lower court.